

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARTIN L. STRINGER and U.S. POSTAL SERVICE,
NORTHEAST STATION, Columbia, SC

*Docket No. 01-820; Submitted on the Record;
Issued June 24, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant received an overpayment of compensation in the amount of \$2,874.98 for the period April 3 through June 5, 1996; and, (2) whether the Office properly found that appellant was at fault in the creation of the overpayment and, therefore, was not subject to waiver.

This case has been before the Board previously. By decision dated September 22, 2000, the Board found the case not in posture for decision because the record before the Board was incomplete. The Board remanded the case to the Office to secure relevant information regarding appellant's receipt of benefits from the Department of Veterans Affairs (VA).¹

Subsequent to the Board's September 22, 2000 decision, in a decision dated November 15, 2000, the Office noted that the Board based its decision on an incomplete record.² Upon reconstruction of the record, the Office found that the evidence of record supported that appellant received dual benefits for the period April 3 through June 5, 1996 and that he failed to make an election when offered by the Office. The Office thus found that an overpayment in compensation was created in the amount of \$2,874.98 "for the aforementioned period subject to collection." The instant appeal follows.

¹ Docket No. 99-2069.

² The Board notes that the Office did not forward a complete record to the Board prior to the issuance of the September 22, 2000 decision. The record also contains a May 28, 1999 decision in which the Office waived an overpayment in compensation in the amount of \$744.00 and a July 6, 1999 decision in which the Office found that appellant's actual earnings as a modified carrier represented his wage-earning capacity. In an August 15, 2000 decision, Docket No. 99-1242, the Board found that appellant failed to establish that he sustained an emotional condition in the performance of duty.

The Board finds that appellant received an overpayment in compensation in the amount of \$2,874.98.

Section 8116(a) of the Federal Employees' Compensation Act provides:

“(a) While an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he may not receive a salary, pay or remuneration of any type from the United States, except

- (1) in return for service actually performed;
- (2) pension for service in the Army, Navy or Air Force;
- (3) other benefits administered by the [VA] unless such benefits are payable for the same injury or the same death; and
- (4) retired pay, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or other uniformed services....”³

The record in this case indicates that by letter dated December 20, 1995, the Office accepted that appellant sustained bilateral carpal tunnel syndrome and that he authorized a left carpal tunnel release on April 3, 1996. He stopped work that day and received wage-loss compensation in the amount of \$2,874.98 for the period April 3 through June 5, 1996. The record further indicates that in a decision dated May 1, 1996, after the Office accepted that appellant sustained bilateral carpal tunnel syndrome, the VA found that appellant's left wrist injury was increased from zero percent disabling to ten percent disabling, effective January 25, 1996.⁴ In a September 20, 1996 decision, the VA found that appellant was entitled to a 100 percent disability rating for his left wrist injury “based on surgical or other treatment necessitating convalescence” for the period April 3 through July 1, 1996 because “the treating doctor told [appellant] to be out of work until [June 6, 1996].”⁵

By letter dated January 8, 1998, the Office informed appellant that because he was receiving benefits from both the VA and the Office for his carpal tunnel syndrome, he must make an election or an overpayment would be declared. In a letter dated January 26, 1998, appellant responded that the injuries for which he was receiving benefits were different and he was therefore, entitled to VA benefits and wage-loss compensation under the Act. By letter dated February 12, 1998, the Office informed appellant that the determination that he received

³ See also 20 C.F.R. § 10.435(a).

⁴ The VA stated that the basis for this decision was that an evaluation of 10 percent was granted for dorsiflexion of the wrist less than 15 degrees and an evaluation of 10 percent was also assigned for palmar flexion limited in line with the forearm. The VA further noted that appellant had recent carpal tunnel release.

⁵ By letter dated September 6, 1996, appellant wrote the VA enclosing evidence which, he stated, “will show a need for convalescence.”

dual benefits was based on the evidence of record. He was again asked to complete election forms and was given 30 days to respond. The Board finds that as appellant received wage-loss compensation from the Office for the period April 3 through June 5, 1996 following his left carpal tunnel release and also received VA benefits for that period “based on surgical or other treatment necessitating convalescence,” he received dual benefits pursuant to section 8116(a)(3). He failed to make an election. Thus, an overpayment in compensation in the amount of \$2,874.98 was created.

The Board however, finds that this case is not in posture for decision regarding a finding of fault or entitlement to waiver.

It is an elementary principle of workers’ compensation law and Office regulations to provide,⁶ that the Office is required to make findings of fact and a statement of reasons regarding the material facts of the case.⁷ The Board has emphasized the importance of the Office giving the claimant a correct description of the basis of its decision so that the parties in interest will have a clear understanding of the precise defect of the claim and the kind of evidence that would tend to overcome it.⁸ In the instant case, in the decision dated November 15, 2000, the Office merely stated:

“The evidence on file supports that [appellant] received prohibited dual benefits from April 3 through June 5, 1996 and that you received an increase in VA benefits for the same period. In addition, you failed to make an election when offered to you by this office. As such, there is an overpayment of \$2,874.98 for the aforementioned period subject to collection.”

While it could be inferred that the Office found appellant at fault in the creation of the overpayment in compensation in the amount of \$2,874.98, the Board finds the November 15, 2000 decision does not provide a sufficient description of the basis of its decision so that the parties in interest will have a clear understanding of the precise defect of the claim and the kind of evidence that would tend to overcome it.⁹ The case will therefore, be remanded to the Office for a finding as to whether appellant was at fault in the creation of the overpayment and, if found to be not at fault, whether appellant is entitled to waiver.

⁶ 20 C.F.R. § 10.126 (1999).

⁷ See *Robert L. Johnson*, 51 ECAB ____ (Docket No. 99-102, issued April 17, 2000).

⁸ *Fidel E. Perez*, 48 ECAB 663 (1997).

⁹ *Id.*

The decision of the Office of Workers' Compensation Programs dated November 15, 2000 is affirmed in part and vacated in part and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, DC
June 24, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

A. Peter Kanjorski
Alternate Member